No. 90-1632

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In The Supreme Court Of The United States

OCTOBER TERM, 1990

NICHOLS B. MEAIGE, JR.,

Petitioner,

v.

HARTLEY MARINE CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a seamen, who is discharged for refusal to carry out an assignment that would violate a federal statute, has a private cause of action under general maritime law.

LIST OF ALL PARTIES, PARENT COMPANIES AND NON-WHOLLY OWNED SUBSIDIARIES

Hartley Marine Corp. (Party)

Midland Enterprises Inc. (Party below and Parent)

Eastern Enterprises (Parent)

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NO._____

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NICHOLS B. MEAIGE, JR.,
Petitioner,

vs.

HARTLEY MARINE CORPORATION,
Respondent.

PETITION FOR WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

BRIEF IN OPPOSITION
TO PETITION FOR WRIT
OF CERTIORARI

CITATION OF THE OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

The January 12, 1990, Memorandum Opinion and Order and the January 18, 1990, Order

modifying the same issued by Charles H. Haden II, Chief Judge, United States District Court for the Southern District of West Virginia, Parkersburg Division is unreported.

The decision of the United States Court of Appeals for the Fourth Circuit is styled and reported as Meaige v. Hartley Marine Corporation, 925 F.2d 700 (4th Cir. 1991).

STATEMENT OF JURISDICTION

The Petitioner is seeking to invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES

46 U.S.C. §8104(h) provides:

On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

46 U.S.C. §8104(j) provides:

The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of $500. The seaman is entitled to discharge from the vessel and receipt of wages earned.

46 U.S.C. §7703 provides:

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if, when acting under the authority of that license, certificate, or document, the holder --

(1) has violated or failed to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters.

(2) has committed an act of incompetence, misconduct, or negligence.

46 U.S.C. §2114 provides:

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel may not discharge or in any manner discriminate against a seaman because the seaman in good faith has reported or is about to report to the Coast Guard that the seaman believes that a violation of this subtitle or a regulation issued under this subtitle has occurred.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including--

(1) restraining violations of this section; and

(2) reinstatement to the seaman's former position with back pay.

STATEMENT OF THE CASE

A. Procedural History

Petitioner, Nichols B. Meaige, Jr. appealed to the United States Court of Appeals for the Fourth Circuit, from a January 12, 1990, Memorandum Opinion And Order and a January 18, 1990, Order modifying the January 12, 1990, Order of Charles H. Haden, II, Chief Judge of the United States District Court for the Southern District of West Virginia that dismissed his wrongful discharge action because it failed to state a cause of action under either general maritime law or West Virginia common law. Meaige also appealed to the United States Court of Appeals for the Fourth Circuit from an Order by Judge Haden denying his motion that the District Court certify questions to the West Virginia Supreme Court of Appeals.

On February 5, 1991, the Fourth Circuit Court of Appeals affirmed the decisions of the District Court. Meaige v. Hartley Marine Corporation, 925 F.2d 700 (4th Cir. 1991).

B. The Ashland Fuel Run

Nichols B. Meaige, Jr. was employed by Hartley Marine Corporation. Meaige worked for Hartley Marine as a deckhand and pilot of vessels operating on the Ohio River.

From time to time, Meaige would be called upon to serve as pilot on the "Ashland fuel run". This voyage was from Point Pleasant, West Virginia, to Kenova, West Virginia, where the then empty fuel barge would be docked for loading at an Ashland Oil facility. After the fuel barge was loaded, the round trip was completed by returning with the loaded fuel barge to Point Pleasant, West Virginia. The round trip could last as long as thirty hours.

The length of the trip would depend upon the water level and how long the fuel loading took at the Ashland Oil facility. The crew consisted of a pilot and a deckhand. The pilot was paid around the clock from port to port, including the "down time" that the fuel barge was being loaded at the Ashland Oil dock.

In March, 1988, Hartley requested that Meaige make the Ashland fuel run, a voyage he had undertaken on prior occasions. Meaige refused and stated that he would not be making any more fuel runs. His reasons for refusing included: twenty-four hours is too long for him to stay on the boat; there was a lack of shower and bathroom facilities; the boat was too noisy. Hartley discharged Meaige because he refused to make the Ashland fuel run.

SUMMARY OF THE ARGUMENT

The Writ should be refused because of consistency of decision of the United States Court of Appeals for both the Fourth Circuit and the Fifth Circuit.

Congress has provided a specific judicial remedy to a seaman and a Maritime Court should not create an additional cause of action beyond that which has been legislated.

ARGUMENT

REASONS FOR REFUSING THE WRIT

A review on writ of certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 10. There are no special nor important reasons for granting the petition. The decision of the United States Court of Appeals for the Fourth Circuit below is not in conflict with the decision of another United

States Court of Appeals. To the contrary, the decision below is in complete agreement with an earlier decision of the United States Court of Appeals for the Fifth Circuit on the same matter. Feemster v. BJ-Titan Servs. Co./Titan Servs., 873 F.2d 91 (5th Cir. 1989). There is total consistency of decision of this same federal maritime issue.

The Fourth Circuit Court below and the United States Court of Appeals for the Fifth Circuit in the case of Feemster v. BJ-Titan Servs. Co./Titan Servs., 873 F.2d 91 (5th Cir. 1989) observed that the United States "Coast Guard is the agent of enforcement of maritime safety and seaman protection laws; therefore [the seaman] 'can complain of safety violations to the Coast Guard and enlist its aid to prevent violations.'" Feemster at 93-94; Meaige v. Hartley Marine Corporation, 925 F.2d 700 (4th Cir. 1991). Indeed, Congress

enacted specific legislation protecting seamen that report such safety violations to the Coast Guard.

46 U.S.C. §2114 provides:

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel may not discharge or in any manner discriminate against a seaman because the seaman in good faith has reported or is about to report to the Coast Guard that the seaman believes that a violation of this subtitle or a regulation issued under this subtitle has occurred.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including--

(1) restraining violations of this section; and

(2) reinstatement to the seaman's former position with back pay.

Congress has thus addressed the rights of seamen who report or are about to report safety violations and has provided specific remedies for discrimination and discharge.

In concluding his presentation of reason(s) why the Court should grant his writ, petitioner asks this Court to refer to its decision in Moragne v. States Marine Lines, 398 U.S. 375 (1970). The reference is requested apparently in support of petitioner's theory that an Admiralty Court can create a cause of action without specific statutory authority. In the recent decision of Miles v. Apex Marine Corp., 59 U.S.L.W. 4001, 112 L.Ed.2d 275, 111 S.Ct. 317 (1990) this Court revisited Moragne and described it

at length. This Court held "that there is a general maritime cause of action for the wrongful death of a seaman, but that damages recoverable in such an action do not include loss of society." This Court "also held that a general maritime survival action cannot include recovery for decedent's lost future earnings." Miles, supra 111 S.Ct. at 328. In so holding this Court said:

* * *

> We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory

> remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.
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> * * *

Miles v. Apex Marine Corp., 59 U.S.L.W. 4001, 112 L.Ed. 2d 275, 111 S.Ct. 317, 323 (1990).

Although the above quoted material is not a part of the specific holding of this Court in Miles, supra, it nonetheless provides a rationale for not creating an additional maritime cause of action beyond that which has been specifically provided for in 46 U.S.C. §2114.

CONCLUSION

It is respectfully submitted by respondent, Hartley Marine Corporation that the petition for writ of certiorari should not be granted.

Respectfully submitted

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